

Approved as Written: April 17, 2002

**CITY OF MORGAN HILL  
JOINT SPECIAL AND REGULAR CITY COUNCIL MEETING AND  
SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES  
WEDNESDAY, APRIL 3, 2002**

**CALL TO ORDER**

Mayor/Chairperson Kennedy called the meeting to order at 6:30 p.m.

**ROLL CALL ATTENDANCE**

Present: Mayor/Chairman Kennedy, Council/Agency Members Carr and Tate  
Late: Council/Agency Member Sellers and Chang (arrived at 6:33 p.m.)

**DECLARATION OF POSTING OF AGENDA**

Office Assistant II Malone certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

***City Council and Redevelopment Agency Action***

**CLOSED SESSION:**

City Attorney/Agency Counsel Leichter announced closed session items.

**1.**

**CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**

Significant Exposure to Initiation of Litigation

Authority: Government Code Sections 54956.9(b) & (c)

Number of Potential Cases: 4

**2.**

**CONFERENCE WITH LEGAL COUNSEL - POTENTIAL AND EXISTING LITIGATION:  
CONFERENCE WITH REAL PROPERTY NEGOTIATORS**

Legal Authority: Government Code 54956.8 & 54956.9(a) & (c) (1 potential case)

Real Property(ies) involved: APN 728-31-007 & 008; 25.50 acres located on the southwesterly side of  
Cochrane Road (St. Louise Hospital property)

City Negotiators: Agency Members; Executive Director; Agency Counsel; F. Gale Conner,  
special counsel; Rutan & Tucker, special counsel

Case Name: San Jose Christian College v. City of Morgan Hill

Case Numbers: USDC Northern California No. C01-20857 RMW

Closed Session Topic: Potential Existing Litigation/Real Estate Negotiations

### **OPPORTUNITY FOR PUBLIC COMMENT**

Mayor/Chairman Kennedy opened the Closed Session items to public comment. There being no public comment, Mayor Kennedy closed public comment.

### **ADJOURN TO CLOSED SESSION**

Mayor/Chairman Kennedy adjourned the meeting to closed session at 6:32 p.m.

### **RECONVENE**

Mayor/Chairman Kennedy reconvened the meeting at 7:04 p.m.

### **CLOSED SESSION ANNOUNCEMENT**

City Attorney/Agency Counsel Leichter announced that there was no reportable action on the closed session items, and that these items have been continued for discussion following the conclusion of the regular agenda items.

### **SILENT INVOCATION**

### **PLEDGE OF ALLEGIANCE**

Mayor/Chairman Kennedy invited Mr. Paul Yokoi to lead the Pledge of Allegiance.

### **INTRODUCTIONS**

Director of Public Works Ashcraft introduced Yat Chuen Cho, Junior Engineer, as a new employee in the Public Works Department.

### **PROCLAMATIONS**

Mayor Kennedy presented a proclamation to Dr. Ronald Mayeda in recognition of the Morgan Hill Haru Matsuri festival on April 14. Dr. Mayeda invited everyone to the festival and thanked the Council for the proclamation.

Mayor Kennedy then presented a proclamation recognizing the 100th/442nd Regimental Combat Team & Military Intelligence Service for their bravery and accomplishments during World War II. He praised this regiment for the outstanding manner in which they distinguished themselves in battle.

Dr. Ronald Mayeda introduced Mr. Paul Yokoi, a member of this regiment, who received the

proclamation from Mayor Kennedy on behalf of the 100th/442nd Regimental combat Team & Military Intelligence Service. Mr. Yokoi, thanked the Council, on behalf of the veterans, for this proclamation.

Mayor Kennedy then read a proclamation remembering the victims of the holocaust and declaring April 7 through April 14, 2002, as "Days of Remembrance" in memory of the millions of victims of the Holocaust, and in honor of the survivors, rescuers and liberators.

### **CITY COUNCIL REPORT**

Council Member Chang reported on her recent trip to Sacramento to attend an event hosted by the South Valley Manufacturing Group and The Cities Association. She stated that there was a total of 90 participants attending the conference, including Mayor Kennedy, Mayor Pro Temp Carr, and Council Member Sellers. There were 6 issues that were discussed with 60 lawmakers, with 5 of them having a possible effect on Morgan Hill, two in particular impacting the City: 1) a school bond that will raise capital funds for schools, and 2) a housing bond that will provide affordable housing. She stated that most of the people she met were supportive of maintaining revenues for cities, but that they learned that there will be a \$20 billion shortfall in the State's budget (20% of the total budget). She felt that the City has to tighten its spending and make sure that leaders and staff consider the budget situation in order to avoid impacting city services. In a revenue-related item, she reported that the State is going to borrow some of the traffic funds and put them into the general fund. She stated that the city needs to ensure that legislators include language that returns money to traffic funds so that there will be money available to deal with local traffic problems.

### **CITY MANAGER'S REPORT**

City Manager Tewes reported that staff has begun the process of reducing spending, and is busy preparing budget recommendations to be presented to the City Council on May 15. He also reported that the Council will have a special meeting on April 10 to hear a presentation on the Morgan Hill Community Health Foundation, and a joint study with the Daughters of Charity regarding restoring health services to Morgan Hill. Also, at that meeting, a report will be presented on the Fire Master Plan.

### **CITY ATTORNEY'S REPORT**

City Attorney Leichter reported that there is no change in the number of cases in the litigation summary.

### **PUBLIC COMMENT**

Mayor/Chairman Kennedy opened the floor to public comment for items not appearing on this

agenda. There being no public comment, Mayor/Chairman Kennedy closed the public comment.

## ***City Council Action***

Mayor Kennedy requested that item 4 be removed from the Consent Calendar.

**Action:**        *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Approved** Consent Calendar Items 1-3 and 5-8, as follows:*

**1. ENVIRONMENTAL PERFORMANCE OF NEW PUBLIC FACILITIES**

**Action:** ***Approved** City Council Policy 02-01.*

**2. REIMBURSEMENT TO MODE CONSTRUCTION FOR THE EXCAVATION OF A PORTION OF BUTTERFIELD CHANNEL**

**Action:** *1) **Appropriated** \$11,500 from the Current Year Unappropriated AB 1600 Storm Drain Fund Balance for This Reimbursement; and 2) **Authorized** Reimbursement of \$11,500 for the Excavation of a Portion of the Butterfield Channel to Mode Construction*

**3. AGREEMENT FOR ELIMINATION OF RETENTION BASIN AT THE NORTHWEST CORNER OF TENNANT AND CAPUTO DRIVE**

**Action:** ***Authorized** the City Attorney to Prepare the Necessary Agreement to Remove the Existing Retention Basin at the Northwest Corner of Tennant and Caputo Drive by Purchasing Replacement Capacity in Butterfield Channel.*

**5. AWARD OF CONTRACT FOR 2001-02 PAVEMENT RESURFACING PROJECT PHASE II-DOWNTOWN MONTEREY**

**Action:** ***Awarded** Contract to C. F. Archibald Paving, Inc. for the Construction of the 2001-02 Phase II Street Resurfacing and Reconstruction Project-Downtown Monterey Road in the Amount of \$302,950.20 for the Based Bid Work, \$27,588.80 for Bid Alternate work, Subject to City Attorney Review and Approval.*

**6. APPROVE DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM AND ANNUAL GOAL**

**Action:** *1) **Approved** the City's Disadvantaged Business Enterprise (DBE) Program and Annual Overall DBE Goal of 8% for the Federal Fiscal Year 2001/2002, beginning on October 1, 2001 and Ending on September 30, 2002; and 2) **Authorized** the City Manager, by Adoption of the Report, to Sign the Final DBE Program and Submit it to Caltrans on Behalf of the City.*

**7. SUBDIVISION AMENDMENTS: SDA-00-14: LLAGAS - DELCO AND SDA-00-15:**

**HALE - DELCO (SHENG)**

***Action:*** ***Took No Action***, thereby Concurring with the Planning Commission's Decision Regarding Approval of the Subdivision Map Amendments.

**8. APPROVAL OF SUBDIVISION IMPROVEMENT WITH MURPHY RANCH**

***Action:*** 1) ***Approved*** Subdivision Improvement Agreement and 2) ***Authorized*** the City Manager to Sign the Agreement on Behalf of the City with Murphy Ranch, LP.

**4. ACCEPTANCE OF CONSTRUCTION OF 2001-02 PHASE I PAVEMENT REHABILITATION PROGRAM**

Mayor Kennedy noted that this is a pavement rehabilitation for Monterey Road from Main to Dunne Avenues. He inquired how staff would be handling the repaving of the downtown area to ensure that the City retains the quality of design as it relates to the brick pavement?

City Manager Tewes responded that the only item that would be affected is the roadway and that the brick crosswalks would be preserved.

Council Member Sellers indicated that in some cases, the brick sidewalks are in need of repair and inquired if these were included as part of the repair work order?

Director of Public Works Ashcraft informed the City Council that there would be a separate contract for the brick pavers as this is specialized work. The repair to the brick pavers would be contracted either before or after the pavement.

***Action:*** *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0): 1) ***Accepted*** as Complete the 2001-02 Phase I Pavement Rehabilitation Project in the Final Amount of \$1,907,583, and 2) ***Directed*** the City Clerk to File the Notice of Completion with the County Recorder's Office.*

**PUBLIC HEARINGS**

**9. ZONING AMENDMENT APPLICATION, ZA-01-05: MONTEREY - SOUTH VALLEY DEVELOPERS**

Community Development Director Bischoff presented the staff report, indicating that this item was continued from the City Council's meeting of February 27 with direction to staff to investigate seven specific items: 1) pedestrian overcrossing of the railroad tracks, 2) benefits of limiting hours of operation for the convenience market and the sales of alcoholic beverages; 3) assessing the security benefits of providing at least two employees at the facility at all times; 4) identify appropriate minimum standards for maintenance of the convenience market and gas station; 5) investigate the

feasibility and benefit of installing a fence on the west side of the railroad tracks instead of the east side; 6) evaluate the impacts of light, glare and noise on the adjacent residences to the west; and 7) evaluate the effects of widening southbound Monterey Road to four lanes at such time that the trestle is widened. He informed the City Council that the staff report includes a summary of findings with respect to these seven points.

Mr. Bischoff informed the City Council that last week, a letter was received, addressed to the Mayor and Council Members from Martin Fineman, attorney for BP Arco, in response to a letter received from Mr. Sweigert, representing the neighbors, with respect to the CEQA process for this project. Also, staff received a phone call from Sherry Vanella who indicated that she was representing the neighbors adjacent to the Gateway project. Staff transcribed her request and summarized her comments by stating that the neighbors are willing to drop their opposition to this project, providing that three conditions are met: 1) the hours of operation be limited from 10 p.m. to 6 a.m. for the gas station, convenience market, carwash and fast food restaurant. 2) Any expansion of these hours should only occur after public notice has been given to adjacent property owners; and 3) all other conditions applied to this project would continue to apply. He indicated that he spoke with one of the representatives of the neighborhood group, Mr. Quill, who confirms that the comments do represent the views of the neighbors and not just the author's. He addressed condition number 2 relating to prohibiting the extension of the hours of operation. Should the Council wish to adopt this condition, staff would recommend that it be included as a part of the PUD guidelines (adopted by ordinance). Any change to the guidelines would require public notification to individuals residing within 300 feet and notification in the newspaper.

Mr. Bischoff summarized staff findings with respect to the seven items as follows:

- 1) Provision of a pedestrian overcrossing. He indicated that the Council's packet provides an illustration of how the pedestrian crossing could be accommodated on the site. Provision of the overcrossing would require amendment to the site plan (e.g., elimination of some parking and square footage of the building). Should the Council wish to allow for a pedestrian overcrossing in the future, the added condition would read: "The size and configuration of the office building is not approved with the adoption of these guidelines. As part of the architectural and site review process for this building, its size and placement on the site will be modified to allow for future construction of a pedestrian overcrossing of the Union Pacific Railroad tracks."

Another component of the railroad overcrossing was the question of installation of a second set of tracks. He stated that it is Planning and Public Works staff's belief that both sets of tracks can be accommodated within the existing right of way. Therefore, additional right of way would not be necessary.

- 2) The benefits of restricting the hours of operation for sale of alcohol within the facility. He

said that staff conducted research and found that indeed, a significant number of robberies occur late in the evening and early in the morning. Studies by both the states of Florida and Virginia found that restricting hours within these times significantly reduced the number of crimes that occur. He indicated that State law presently limits the hours for the sale of alcohol between 2 a.m. to 6 a.m. He noted that at the previous Council meeting, a representative from Arco suggested that they may be willing to consider restricting the hours even further (e.g., restricting hours from 11 p.m. to 6 a.m.).

- 3) Addition to the minimum standards for maintenance of the convenience market and the gas station. He informed the City Council that there are current limitations relating to window displays and outside phones and other things that may help with maintenance. Staff has identified 7 additional items that could be considered that were included within the staff report.
- 4) Assessing security benefits of providing at least 2 employees. Looking at the same studies from Virginia and Florida, they suggest that in 85% of the cases that were studied with respect to robberies at convenience stores, they occurred when the clerk was alone in the store. He indicated that the state of Florida has placed some restrictions on this, and in the city of Gainesville, requiring a minimum of 2 employees for 24-hour operations. The study indicates that in Gainesville, between 1986 and 1991, that the number of robberies was reduced by 92% from the hours of 8 p.m. and 4 a.m., attributed greatly by the requirement of a minimum of 2 employees at all times. He said that it seems that the combination of limiting the hours and additional staffing has had a positive affect in these areas. He noted that Morgan Hill has other existing 24-hour uses in the city that do not currently have this restriction.
- 5) Feasibility of installing fencing on the west side of the railroad tracks. He stated that there is sufficient room to accommodate a fence on the west side of the tracks. The fence would be installed in the public right of way, behind the paved area. Therefore, there is approximately 3-4 feet which a fence could be installed and not be in the railroad right of way or within the street section of the road. He stated that staff has spoken with County fire staff and that they have indicated a willingness to consider granting an easement for construction and maintenance. Therefore, it would be possible to construct a fence on the west side of the railroad tracks. However, staff was not certain about the benefits to this.
- 6) Noise and glare. Included in the staff report is a summary of an independent analysis performed on the noise and lighting study prepared by the applicant, noting that one of the city's environmental consultants were used. The consultant confirmed that the studies conducted by the applicant were accurate and that they believe that noise, light and glare would not be an issue for the neighbors.

- 7) Effects of widening southbound Monterey Road on the project. He stated that two southbound lanes are being proposed up to the second most southerly driveway. At that point, an acceleration lane is proposed which transitions down to a single lane. He said that there is sufficient right of way that at such time that the railroad trestle is replaced, it could be widened to provide two southbound lanes.

Mr. Bischoff informed the City Council that he has specific wording for conditions for any of the above seven issues, should the Council wish to approve the project.

Chief of Police Galvin stated that in researching robberies, assaults and thefts from a convenience store, it is apparent that in high crime rate areas it is a benefit to have 2 or more employees at a convenience store. He said that the City of Gainesville requires this by ordinance. Due to their success in reducing the crime rate, the state of Florida enacted a statute to require that after certain crimes are committed in convenience stores, it is mandated that at least 2 employees be on site. He indicated that this is not a problem in Morgan Hill to date. He said that the 3 Chevron stations and 1 Shell station have 1 employee after midnight, most running from 6 or 7 p.m. to 6 a.m. with one employee with the exception of the Chevron dealership at Highway 101 and Cochrane, having 2 employees up until midnight. He noted that the Chevron dealership at Vineyard and Monterey do not allow the sale of alcohol. The Chevron dealership at Cochrane and Highway 101 does not sell alcohol after midnight. The Shell and Chevron gas stations at Dunne and Highway 101 do sell alcohol. He noted that none of these facilities has had armed robberies recently. The only robbery experienced the first quarter of this year was at the 7-11 located on Main Avenue in a residential area. He felt that it would be a good idea to restrict the sale of alcohol after midnight.

Regarding other safety issues, Chief Galvin stated that he would like to see good video cameras installed as well as proper lighting. He indicated that police personnel could work with the applicant regarding other safety precautions. Regarding the issue of fencing, he felt that the City would want to protect the railroad tracks from the largest number of people near the tracks. This would be on the east side and not the west side as you would have individuals coming to the site to purchase items and gas. He indicated that there have not been any fatal accidents associated with the railroad tracks with the exception of 2 incidents; one north of the city and one south of the city limits. He indicated that he would need to investigate the City's curfew hours for youth. He stated that businesses have a right to restrict loitering on their private premises and that the police department can remove individuals who cause problems or loiter at locations similar to this proposal. For youths, the police department would use endangerment sections of the law and take them into protective custody.

Mayor Kennedy opened the public hearing.

Ken Wickerham, BP Arco, corrected two facts that were wrong at the last meeting relating to the video presented at that time: 1) It was indicated that these were company facilities in the Salinas area. He corrected this statement by indicating that they are dealer operations. 2) The gasoline



stations were old pumpers with a kiosk that are 30 years old and not 2 years old as represented and that the second was an old rebuilt gasoline station that was retrofitted and is approximately 15 years old. He presented the City Council with a representation of what new BP Arcos would look like from three coastal areas in California.

George Garcia, project Architect, presented a 3 minute video in response to the video presented by a resident at the last meeting. He said that the video depicts three different types of sites in three parts of the state. 1) standard/dealer facility in the bay area that would be similar in size to what is being proposed in Morgan Hill and located adjacent to a residential area (corporate design); 2) a franchise facility in central California that required special architecture (non franchise architecture) adjacent to residential; and 3) a company owned, non franchise/special architecture in southern California located adjacent to residential in association with other retail.

Scott Schilling stated that he has worked with Arco to make this a high quality architecturally designed planned unit development facility from those viewed in this evening's video, including an entry statement. He addressed the issue of Monterey Road frontage improvements and the widening of Monterey Road. He indicated that Venture Corporation would widen a portion of the east side of Monterey Road to its full width (2 through lanes and an additional 12 feet deceleration/acceleration into/out of Jarvis. This project would be installing a 2 through lanes that would transition to the current single lane). The additional two-twelve foot through lanes could be used for deceleration or acceleration lanes. He stated that curb, gutter and sidewalks would be installed to the full general plan build out of Monterey Road. In terms of future widening of the overcrossing, he stated that the right of way exists and that the significant portion of the improvements would be installed with the project. He proposes to signalize the Monterey/Old Monterey Road intersection and maximize the City's options in terms of stripping of Monterey Road under the underpass. The uses on the site meet the zoning designation for general commercial and that it was his belief that the project can coexist with the surrounding uses, including the residential areas. He felt that he has made every effort to address the concerns of the neighbors that reside adjacent to the project without eliminating the project. He has exceeded the requirements of the zoning district for this project and has provided a PUD with the highest quality design and maintenance guidelines for the City. He felt that it would be an excellent project for the community with safety improvements that would benefit the entire area. The project would set a high standard for development and architecture for this area of the city. He indicated that the project has some flexibility with some of the items before the city council this evening.

Mark Jensen, 675 East Central Avenue, indicated that he has been a homeowner in Morgan Hill for the past 9 years as well as a business owner. His office is located kiddy corner to this project (Monterey and Cochrane Road). He addressed the minimum standards for maintenance of the convenience market/gas station and the widening of the road/improvements to Monterey Road. At a previous council meeting, concerns were raised over the ongoing maintenance and upkeep of the facility. He stated that this still remains a concern as no one wants to see a poorly maintained/run

down facility. He stated that he does not see this as being a problem with this project as it was his belief that a PUD gives the strictest possible guidelines for maintenance and upkeep. Being a resident for 9 years, the underpass remains a problem and a dangerous condition. He stated that improvements to this area are important to the community from a safety stand point (e.g., installation of a traffic signal, crosswalks, better stripping, deceleration/acceleration lanes).

Robert Quill stated that the neighborhood does not like the Arco am/pm aspect of the project due to concerns with safety, traffic and impact to the quality of life. He indicated that area residents have met with Mr. Schilling in order to try to find ways to mitigate the problems. He said that should the gas station were not to be opened between the hours of 10 p.m. to 6 a.m., the residents would be willing to accept the Arco gas station. He indicated that the residents oppose the pedestrian overpass. It is felt that there are other locations to locate the pedestrian overpass further south in order to provide safe access without impacting the neighborhood in conjunction with the widening of the railroad tracks and the trestle.

Rebecca Tas, 18435 Old Monterey Road, indicated that she spoke with most of the neighbors and indicated that none of the neighbors support an overpass into the neighborhood as it would make it easier for the neighbors to get to the proposed project and would also make it an easy access for others to enter the neighborhood. She felt that a cement overpass would be unsightly. Should the Council support an overpass, she requested that it be moved to the south side of the fire station and keep it as far away from the neighborhood as possible.

Rogelio Balderas, 18520 Del Monte Avenue, stated his agreement with the consensus of the neighborhood association that by limiting the hours of operation, it would address issues of concerns. He said that Morgan Hill is fortunate that it is not subjected to crimes. However, alcohol contributes to violence against the home, individuals, children, women and self. He recommended that the sale of alcohol be controlled to the extent possible and stated his consensus of the comments as expressed by Mr. Quill.

Linda Hartman indicated that the residents have repeatedly addressed the Council regarding their concerns with the proposed am/pm mini market in the neighborhood. It is still the residents' belief that this project would place children in harms way. She felt that children rely on adults to make choices for them. The residents did not want to come across as being unreasonable. She requested that the facility be shut down at 10 p.m. so that parents do not need to worry about their children being unsafe at night. She indicated that acquaintances of hers have indicated that the gateway project is a done deal. She requested that elected official keep her neighborhood safe.

Bob Gadsby, 15310 Venetian Way, stated his support of this project. He did not believe that the residents' objections have much merit based on the amendments planned by the developer for the secluded eye sore, patch of ground, bounded by an active railroad track and a full service, pink colored bar located next door. He felt that any neighboring objections would be coming from a

competitive company for personal reasons and not for the benefit of the citizens of Morgan Hill as he would like to see competitive gas prices. It was his belief that the project would provide significant safety improvements for the neighborhood and would help the future traffic commute with the widening of Monterey Road, including the installation of a traffic signal light. Installation of fencing would stop pedestrians from crossing the tracks or vagrants hiding or sleeping on the existing weeds on the property. He felt that all objections, even those without merit, have been more than adequately answered by the developer at a higher cost than the underlying zoning would merit. He requested unanimous approval this evening because it was his belief that anyone else would be scared to develop the unsightly piece of land in the future and that the citizens of Morgan Hill would be stuck with an eye sore.

Dave Sweigert, Fenton & Keller, stated that at the last meeting, Council Member Sellers appropriately took issue with a point that he made relating to this being the only 24-hour mini market/gas station this close to a residential neighborhood. It was his intention to state that this would be the only 24-hour mini mart/gas station and fast food combination in Morgan Hill this close to a residential neighborhood. He said that these are the types of development that would be appropriately placed adjacent to freeway entrances. He noted that there were several homes located within 120-130 feet of the project and several homes within 200 feet of the project site. He felt that the 24-hour operation at this site would drastically affect the character of the residential neighborhood, especially during the late night hours. The residents continue to feel that there has not been the appropriate environmental review completed. It is felt that the facility would be incompatible with the adjoining residential neighborhood but strongly requested that should the council approve the project, that it consider the most reasonable compromise that the neighbors are putting before the Council; limiting the hours of operation and not allow a 24-hour operation to occur on the site. Restricting the hours of operation would eliminate the most annoying impacts of this project and would go a long way toward making this a compatible use with the neighborhood. He felt that the claims by the applicant of financial infeasibility were unsubstantiated and should be ignored.

Norman Brown, 164 Sanchez Drive, stated that it has been his experience, living adjacent to a similar facility and railroad crossings, that there were always problems associated with a liquor store. He requested that the Council make the right decision, noting that there are positives and negatives with each decision. He did not believe that this project would provide a positive nor safe environment for his children. Should the Council wish to approve the project, he requested that approval be attached with restrictions. He did not support the pedestrian walkway. He requested restriction in the hours of operation and sale of alcohol. He felt that the facility would be a hang out for youth, noting that two new high schools are being proposed.

Eugene Vanella, 160 Sanchez Drive, stated his opposition to the Gateway project. He did not support a pedestrian overpass into his neighborhood. Should it be approved and built, he requested that it be built further south by the fire station as it would afford safety for the children and the

neighborhood. He said that parents raise kids but that kids make choices. He felt that there were issues associated with alcohol. He noted that city code prohibits the sale of alcohol within a certain distance to schools because parents are concerned with the sale of alcohol adjacent to schools. He felt that the video viewed this evening was stacked up and that it was not known whether the adjacent residents had concerns about a gas station five feet away from the property line. He reiterated that the residents are opposed to the project but that he would go along with the neighbors to accept the project as long as the identified conditions are met, that being restricting the hours of operation.

Ingrid McNulty stated that she resides directly across from the proposed development. She did not oppose development but opposed the gas station and the am/pm mini market selling alcohol, noting that the Schillings would only build a top notch facility as they have excellent projects and an excellent reputation. Should the City Council approve the project, the residents would like it to seriously consider restricting the sale of alcohol after 10 p.m. and shutting down the gas station at midnight. She said that four years ago, a man was killed on the railroad tracks in front of her home. She requested that the Council consider installation of a fence on the west side of the project.

Gary Genest, 18515 Old Monterey Road, stated his opposition to the proposed project. He presented an alternative proposal for the pedestrian overcrossing.

Chris Lawton, BP Global Alliance, deferred his time for the project.

Martin L. Fineman, speaking on behalf of BP Arco, indicated that the project would bring in new services, jobs, investments, safety factors and revenues to the City. He addressed the environmental issues that have been raised in the past and briefly raised this evening by the opponents to the project. He said that he prepared a letter that has been circulated to the Council and has been made part of the record. He stated that City staff has prepared an expanded initial study of the environmental factors relating to the project, including land use, zoning, air quality, water, traffic, transportation as well as other numerous factors. It was found that in almost every instance that there would be no impact or a less than significant impact. He stated that in just a few instances, there were findings that there could be some impacts unless mitigation measures were adopted. He stated that the City has prepared and circulated a negative mitigated declaration. He noted that the opponents of the project have raised, from time to time, that this is not an appropriate way for the City to deal with the environmental issues. Under the California Environmental Quality Act, he felt that it is appropriate and legal means to address the environmental issues. He said that an environmental impact report is not required and that the City is entitled to proceed by way of a negative declaration. In response to issues of noise and lights raised by the neighbors, he noted that the city has commissioned an independent report to be conducted on noise and light factors. The independent experts have determined that there would not be any significant issues in terms of noise or light emanating from the project. He stated that Arco and the applicants are willing to limit the hours of alcohol beverage sales from 10 p.m. to 6 a.m. However, they are not willing to cut off the sale of

gas at 10 p.m., noting that no other gas stations, including the Chevron located down the street have less restrictions. He said that Arco and the applicant are willing to accept the suggestions relating to the maintenance condition as well as the requirement of having two employees at all times.

Jim Schilling, 24293 Via Malpaso, Monterey, yielded his time to his son, Scott Schilling.

Scott Schilling indicated that Arco is willing and flexible on the hours of alcohol sales and that he is flexible on the food service portion of the site. He noted that the Chevron gas station located on Vineyard Boulevard has a gas station facility and a Jack In The Box directly adjacent to a large apartment complex, noting that this project has significantly more distance between residential neighborhoods and the uses on the site. He stated that he would be willing to go toward a non 24-hour operation on the fast food service aspect of the project (e.g., operate between the hours of 5 a.m. to 11 p.m.). He clarified that the am/pm market would have to be opened 24-hours per day for the sale of all goods with the exception of alcohol. He indicated that the hours of operation for the car wash have been limited to daylight hours.

Council Member Sellers noted that the staff report indicates that due to financial reasons, the am/pm mini mart needs to be opened 24-hours. He requested clarification about the reference made in past meetings that the am/pm portion loses money if not opened 24-hours.

Mr. Schilling stated that it has been Arco's position that they would not make the investment if the am/pm mini market is not allowed to remain opened 24-hour as it is a significant safety/risk issue. It was indicated that the facility would need to be lit up whether or not it is open.

There being no further comments, the public hearing was closed.

Council Member Tate stated that it has been a great experience getting to know this neighborhood and that this is a hard decision to make. He realizes that the Arco am/pm proprietor would not back off the 24-hour operation for safety reasons. He was impressed with the statistics presented by staff on the benefits of having two individuals working in the store for the safety of the entire facility. He was not in support of a pedestrian right of way, noting that this was a cost factor. He has heard from Arco that they are willing to have two employees and restrict the sale of alcohol from 10 p.m. to 6 a.m. Therefore, he would support these conditions along with the other conditions established in prior meetings.

Mayor Pro Tempore Carr stated that this has been a true example of how the processes should work, a neighborhood coming together, learning about an issue and helping the City Council understand an issue from the neighborhood's perspective. This is how a democracy should work with individuals reaching out to Council members. He appreciated the fact that everyone stayed positive about the issue. He stated that he was not supportive of a pedestrian overcrossing at this location as it does not make sense. He agreed that this has been a difficult process, noting that the General

Plan Task Force spent a lot of time talking about this piece of property. Discussed was whether to maintain its zoning and the possibilities that could happen to the site. He felt that it made sense to maintain the zoning that has been on the property for a long time, noting that the overall project meets the zoning. He appreciated the fact that the applicant has agreed to restrict the hours of the carwash to daylight hours as well as restrict the sale of alcohol from 10 p.m. to 6 a.m. and provide two employees at all times. He said that fencing is still an issue that the Council needs to find a resolution to. He understood staff's position on the fence issue and recommended that the applicant address the fence issue, indicating that he was more concerned about the neighborhood side. It was his belief that fencing should occur on the west side of the railroad tracks. He addressed the code restricting the sale of alcohol if within 1,000 feet from a school. He felt that there is advertising out there for the sale of alcohol and tobacco that is geared toward children. By limiting the 1,000 feet, the City is limiting advertising. He noted that should the Council approve this project, advertising of tobacco and alcohol would be prohibited. He appreciated the fact that the fast food service facility would be restricted in terms of hours of operation, different from the am/pm mini mart. With the restrictions identified, he would support the project and moving forward with it this evening.

Council Member Sellers stated that in his discussions with Mr. Schilling, he pointed out that he would be objecting to the project, noting that there is a whole lot to like about the project. He did not believe that you could ask for anymore, in terms of the quality of design and the statement that it would make. He stated that his concern is with this particular use at this particular site. He felt that the use is one that should be located in the community at a different site. If the am/pm mini mart aspect of the project would be eliminated, he could support the remainder of the project/uses. Although he would oppose the application for this reason, he felt that the process has been helpful. He stated his appreciation of the flexibility and the willingness to continue to work on this on the part of the applicant and the neighbors.

Council Member Chang stated that her original concern was that of traffic. She understood that Mr. Schilling has worked on this issue quite a bit. She felt that this project would be the best solution that would come to this site. She noted that Monterey Road has been a bottle neck for a long time, and that this is one advantage that she has been considering. She stated that she was originally going to oppose the project based on traffic and the sale of alcohol. She stated that she would accept the compromise of having two employees and prohibiting the sale of alcohol from 10 p.m. to 6 a.m. in exchange for the benefit that the City would gain of a two-line road north of Cochrane to downtown Monterey Road, eliminating the current bottle neck situation. This project would also provide for the installation of a traffic signal.

Mayor Kennedy responded to Ms. Hartman's comment that this project is "a done deal." He stated that up until moments ago, he did not know what action he would be taking on this project. He stated that someone can make assumptions based on initial comments. He clarified that the Council has taken no action on this request. He felt that this project would bring many safety improvements to the area. He stated that he would support the project with the following conditions: 1) restricting the

sale of alcohol from 10 p.m. to 6 a.m.; and 2) having two employees or close the am/pm and gas sales at midnight. He said that the developer/builder has a reputation for building quality projects in the community, noting that he resides in the community and would follow through with his commitments. He expressed concern that should this project not be approved, what may come along later may not be as good of a project. He noted that this parcel has been general planned and zoned for commercial designation for a long time that allows the proposed uses as legal uses. He said that there is a potential threat of a law suit if the City was to take a hard line on uses that are permitted in the zoning district.

Council Member Tate expressed concern that Mayor Pro Tempore Carr is proposing two, eight-foot fences on either side of the railroad tracks. He stated that he was ambivalent as to which side the fence is to be constructed. He recommended that should the Council approve the application, that a condition be included that stipulates resolution of the fence.

Mayor Pro Tempore Carr stated that it was his belief that the fence should be installed on the west side of the railroad tracks. He felt that it was important to have a barrier from the neighborhood to the railroad tracks. If the developer wants a barrier between the tracks and the project, that would be acceptable as well.

Mayor Kennedy felt that the installation of a fence on the east of the railroad tracks would be better because of the alignment of the second railroad track to the west.

Mr. Bischoff stated that the second set of tracks can be accommodated withing the existing Union Pacific right of way. He further stated that there is sufficient room on the west side of the railroad tracks should the City Council decide to require fence installation on that side of the tracks.

Mayor Kennedy recollected that the developer was going to tie the fence to the existing chain link fence just north of the Capris restaurant, if the fence was to be installed east fo the railroad tracks. If installed on the west side of the fence, there would need to be a new continuation of the fence to the north or a disconnect of the fence.

Mr. Schilling stated that he met with representatives of the neighborhood, requesting their input on the installation of the fence on the west or east of the railroad tracks. If installed on the west side, the fence would need to be installed to the north to a point that either ties into the existing home or carry the fence with cyclone fencing an additional distance to the north. He did not know what the neighborhood's desire is about the location of the fence. If installed on the east side of the railroad tracks, landscaping would be installed to provide a buffer adjacent to the fence and be maintained. He requested that the Council select the side it wants the fence to be installed.

Mayor Pro Tempore Carr noted that the guidelines under maintenance of the PUD addresses the fact that repairs to the fence are to be completed within one week of damage.

Mr. Schilling stated that he has advised Caltrain that he would agree to repair the fence within 48-hours of notice.

**Action:**        *On a motion by Council Member Tate and Seconded by Mayor Pro Tempore Carr, the City Council unanimously (5-0) **Approved** the Negative Declaration.*

Mr. Bischoff distributed to the City Council conditions that would address concerns mentioned. He indicated that restricting the hours of operation for a fast food restaurant was not included in the conditions distributed and would need to be included as a condition, should the City Council wish to incorporate said condition.

Council Member Tate stated that he would support restricting the hours of operation for the fast food restaurant as well as Council Issue No. 2, Miscellaneous requirements, Council Issue No. 3, minimum standards of maintenance; and Council Issue No. 4, number of employees per shift and most of Council Issue No. 5 relating to site planning as he would like to leave the fence open as to whether it is to be installed on the west side of the tracks.

Mr. Bischoff stated that restricting the hours of operation for the fast food restaurant can be included as part of Section VII E of the Gateway Guidelines to read: Hours of operation for the fast food restaurant shall be limited from 11:00 p.m. to 5:00 a.m.

Mayor Pro Tempore Carr recommended that Council Issue No. 3, 4.h.6. be amended relating to repairs of the fence shall be completed within 48-hours of damage.

Mr. Bischoff stated that staff would work with Chief of Police Galvin, the applicant and the neighbors regarding resolution on the location of the fence. He said that there would be a number of other applications that would be required for this project. The use permit would need to be reviewed and approved by the Planning Commission. Also, site and architectural review approval would be required for the gas station and the mini mart. He felt that as part of the site and architectural review, staff could work with the neighbors and property owners to determine the best location for the fence.

City Manager Tewes stated that should the fence be proposed on the west side, it would need to return to the City Council because it would be located along private property (County Fire department) and in the public right of way. He stated that in the public right of way, the City would need to establish an encroachment permit or some device with respect to maintenance being borne by this applicant.

Mayor Kennedy felt that it made sense to have a fence on the east side of the railroad tracks in order to install the proper landscaping and conduct maintenance.



Council Member Tate expressed concern that without landscaping being integrated with the fencing, you may lose some of the light shielding.

Council Member Chang noted that should the fence be installed on the west side of the railroad tracks, the City would need to relinquish the applicant's ability to maintain the landscaping.

Mayor Pro Tempore Carr felt that the location of the fence should be considered based on safety, not on the ease of maintenance and upkeep. He said that installation of a fence on the west side of the tracks would create a barrier between children and the railroad tracks.

Mayor Kennedy supported leaving the fence issue open.

Mr. Bischoff inquired whether the fence issue is to return to the City Council or whether it is to be resolved at the ARB or the Planning Commission level?

Mayor Kennedy stated that staff could explain to the Planning Commission or the ARB Council Member Carr's concern with safety.

Council Member Chang stated that her concern was whether the fence would be permitted to be maintained. Her preference would be to install the fence on the west side.

Mr. Bischoff stated that in his discussion with the Fire District, they indicated their willingness to consider the installation of a fence on the west side of the tracks and that this would not affect the travel lanes.

Mayor Kennedy noted that Council Members are indicating that the fence location would be preferable on the west side of the tracks as it provides protection for children and residents.

Mr. Bischoff requested Council latitude regarding conditions B and C such that the decorative eight foot high wrought iron fence is to extend from the railroad trestle as far north as possible, with the preference being on the west side of the railroad tracks, if possible. If the west side cannot accommodate the fence, the fence is to be designed and constructed on the east side of the tracks.

Council Member Sellers felt that it was important that something be done for aesthetic and safety reasons on the east side of the tracks. If the fence is to be installed on the west side, there would be access to the railroad tracks on the east side. He requested that these issues be addressed.

Mr. Bischoff stated that landscaping would be installed on the east side of the tracks. He clarified that the Council is proposing the following amendments to Exhibit B: Section VII, Miscellaneous requirements, addition of C.5 "Sale of alcoholic beverages shall be limited to the hours of 10:00 p.m. to 6 a.m.; modified site development specifications by adding subsection H, maintenance of the PUD

to include seven provisions, including repair of the fence within two days of report of damage; addition of subsections D and E to Section VII, Miscellaneous requirements – require a minimum of 2 employees at the convenience market during all hours of operation, and limiting the hours of operation for the fast food restaurant from 11 p.m. to 5 a.m.; amendment to Section 5, site planning, subsection B, fences and walls, amendment that would not change requirement with respect to the length of the fence, materials or the height of the fence, but to give direction that the Council would like the fence to be installed on the western side of the railroad tracks, if at all feasible. This determination to be made by the Director of Community Development.

**Action:**        *On a motion by Council Member Tate and Seconded by Mayor Pro Tempore Carr, the City Council unanimously (5-0) **Waived** the Reading in Full of the Zoning Amendment Ordinance.\_\_\_\_\_*

**Action:**        *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Carr, the City Council **Introduced** the Zoning Amendment Ordinance by Title Only, as follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT TO ESTABLISH A PLANNED UNIT DEVELOPMENT FOR A 4-LOT COMMERCIAL PROJECT ON A 6.22 ACRE SITE LOCATED AT THE INTERSECTION OF COCHRANE ROAD AND MONTEREY ROAD, EAST OF THE UNION PACIFIC RAILROAD TRACKS (APN 764-10-004), amending Exhibit B of the PUD guidelines as recited by staff above, by the following roll call vote: AYES: Carr, Chang, Kennedy, Tate; NOES: Sellers; ABSTAIN: None; ABSENT: None.*

**Action:**        *It was the consensus of the City Council to consider Agenda Item 13 at this time.*

**13. COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) ANNUAL ALLOCATION (FY 2002-2003)**

Director of Business Assistance and Housing Services Toy presented the staff report.

Mayor Kennedy opened the public hearing.

Cheryl Huguenor, Program Director for Live Oak Adult Day Services, indicated that this service will begin its 10th year in south county with elderly clients residing in Morgan Hill, Gilroy and San Martin. The program's goal is to offer an alternative to nursing home placement by giving care givers the break they need to be able to keep older relatives at home. She invited Council members to attend the October 10<sup>th</sup> year anniversary open house celebration. She stated that the agency is providing respite services by providing home visits, telling the relatives about the center, and determining whether any other services are needed. The agency also assists with filling out paperwork for medicare and/or other forms. She indicated that the agency is licensed for 25

individuals per day, noting that the facility is located in Gilroy and serves all of south county residents.

Lori Escobar, Community Solutions/El Toro Youth Center, thanked the City Council and staff for its support. She indicated that GED classes have been included as program activities as well as other classes since the expansion of the center. The Center has also expanded many programs and would continue to expand programs such as the computer lab program.

Jennifer Ortiz, Tenant Landlord Counselor, and Carol Alcantar, Fair Housing/Bilingual Tenant Landlord Counselor, indicated that this agency works with both tenants and landlords providing counseling, education, and outreach services to south county. It was reported that there have been no further complaints from Las Casas de San Pedro tenants.

Ms. Ortiz thanked the City Council for its continued support and for its continued funding. She also thanked staff for its assistance with tenants and referrals. She informed the City Council that the agency is contracted to provide service to 20 Morgan Hill area residents, resulting in providing services to 80 individuals, noting that the agency always exceeds its limits.

Ms. Alcantar informed the City Council that counseling is conducted by phone with tenants remaining anonymous, receiving approximately 25 calls a month from Morgan Hill residents alone.

Mayor Kennedy noted that Morgan Hill is proposing to provide a significantly higher amount of support than the City of Gilroy (e.g., Morgan Hill recommending \$25,000 in funding while Gilroy is providing \$13,000).

Ms. Ortiz stated that thought is being given to having more of a physical presence in Morgan Hill, establishing extending hours in Morgan Hill. She indicated that it has been seen that the number of referrals are increasing, with Gilroy's numbers being a little bit higher. She said that Project Sentinel has found that by conducting outreach in Morgan Hill, services for Morgan Hill residents are increasing.

Mayor Pro Tempore Carr inquired if thought has been given on how to make relations between landlords and tenants a sustainable one. He asked if there were things that the City can do to make relationships better or to make a landlord a better business person versus increasing a service based on cases rather than looking at the underlying problem that exists.

Ms. Alcantar stated that it may be beneficial to include, as part of the building permit process, that landlords be required to attend a Project Sentinel educational class for new landlords so that problem cycles are not repeated.

Council Member Sellers stated that it appears that services are at the same level or higher in Gilroy

but funding from Gilroy is half of what is proposed by Morgan Hill. He inquired if it would be possible to receive equal funding from Gilroy in order to maintain full funding and allow the city to provide funding to other projects?

Ms. Alcantar responded that Gilroy is a satellite office and that it does not deal with the financial aspect of the project, noting that this information would need to come from the Palo Alto office.

Donna DiMinico, Director for the Long Term Ombudsman Care at Catholic Charities, stated her appreciation of Council support. She indicated that this agency provides advocacy for the residents in Morgan Hill's two nursing homes and three residential care facilities. She stated that a volunteer makes regular visits to Morgan Hill facilities to conduct public outreach of the agency's services. She indicated that more attention is being given to the abuse of seniors in nursing homes and that the State Attorney General is working aggressively toward prosecuting individuals who are abusing elders in nursing homes. She noted that Morgan Hill has never given the full amount of funding requested while other jurisdictions will only consider minimum funding requests. She stated that in the last fiscal year, the agency investigated 50 complaints and that through the first two quarters, 13 complaints have been investigated.

Ms. DiMinico also addressed the Day Break Program and requested that Council reconsider staff's recommended zero funding because the proposed services do not duplicate the services of the Live Oak Adult Day Care. She indicated that the Day Break Program is proposing "in home respite care" for care givers in south county, using volunteers to perform in home respite care. The volunteers provide escorted transportation for the seniors to medical appointments, grocery store, or other personal errands. It is proposed to have a bilingual case manager to serve the bilingual population.

Rosemary Statt, Catholic Charities, indicated that the single parent, co housing at Depot Commons continues to flourish and that the present families are strong, attending college or training programs. She informed the City Council that one family moved from Depot Commons into an apartment and that they have purchased their own condominium in San Jose after four years of savings.

Julian Mancias, representing the St. Catherine's Day Workers Committee, informed the City Council that this is a community-based effort attempting to facilitate what may be considered a problem of day workers that congregate at Main and Depot Avenues looking for work. He stated that the Committee is proposing to find solutions to the problem and to get day workers off the street, assisting with hiring problems and health issues. He requested City funding assistance with this effort to solve this community problem.

Mary Martinez, Director of Day Workers Centers of Los Altos and San Jose, indicated that she is a resident of Morgan Hill. She said that she has worked with the Committee to try and establish guidelines and to get the project off the ground.

Dan Aloom, Emergency Housing Consortium, thanked the Council for its continued partnership in helping to address and end homelessness in Silicon Valley and Morgan Hill. He indicated that last year, the partnership provided more than 100 homeless Morgan Hill residents with over 9,000 days of shelter and support services. By mid year of this current fiscal year, the Consortium exceeded its annual goal by 76%. Next year, it is proposed to provide shelter and services to 90 unduplicated Morgan Hill homeless residents, providing them with a total of 8,450 shelter and service supportive days. He requested that the Council support staff's recommended funding of \$15,000 out of the RDA Housing Mitigation funds, resulting in a city investment of \$1.75 per day per individual to provide shelter, meals and supportive services and help the homeless become more self sufficient.

Erin O'Brien, Program Manager for the Solutions to Violence Program at Community Solutions which includes La Isla Pacifica, informed the City Council that this agency is the only one that offers comprehensive domestic violence services in south county, including the only shelter for battered women and children. She requested support and continued funding for La Isla Pacifica.

John Edwards, Lighthouse, informed the City Council that the program provides services for youth between the ages of 12-18, serving 500 youths each week with games, tutoring, activities, computers and homework assistance. He requested any assistance that can be provided.

Council Member Sellers said that one of the things proposed by the Lighthouse this year is increased staffing. He inquired as to the current staffing level and to what degree is this being considered for increase? Mr. Edwards responded that the Lighthouse lost a permanent staff member and that he would like to replace this position.

No further comments being offered, the public hearing was closed.

Council Member Sellers stated that this is one of the most difficult evenings to go through every year because there are a number of great services provide. It is also discouraging to hear about the problems that continue to exist but that they would be worse if these services were not made available. He stated his support of staff's recommended action with the exception of the Day Break Program as it is a separate program. He recommended that some funding be provided for this program. He recommended that funding for Project Sentinel be reduced to \$19,000.

City Manager Tewes stated that there was \$145,000 in funding requests for a total of \$136,000 in available funds. Staff was able to fund all but \$40,000 by identifying those projects that could be funded from other housing resources. He stated that the city cannot use housing funding for non housing purposes.

Council Member Sellers stated his support of staff's recommended action but that he would like to find a way to even out funding for Project Sentinel with the City of Gilroy as they are receiving the same or more services.

City Manager Tewes recommended that the City Council direct staff to speak with County staff about funding for Project Sentinel, noting that Morgan Hill is not an entitlement City. He indicated that the County is allocating funds to other cities. As an entitlement county, they have to provide fair housing services.

Mayor Kennedy inquired if there was any way to shift some funds to the RDA Housing Set Aside funding that are related to housing?

City Manager Tewes stated that several years ago, the City funded several of these services out of the Senior Trust Fund. However, the City Council adopted a policy that the Senior Trust Fund would no longer be allocated for these kinds of services but instead would be maintained in the hope that the interest earned would help operate a senior center. The City Council established an elaborate policy manual in conjunction with the Senior Advisory Committee on how these funds are to be managed. Should the Council wish to revisit this decision, the Council may wish to seek the advice from the Senior Advisory Committee.

Council Member Chang recommended that the Adult Day Care be funded through the senior services.

Mayor Kennedy stated that the Adult Day Care Service is a residential program. It was clarified that the Day Break Program provides day services.

Council Member Sellers requested that the Senior Advisory Commission review the possibility of providing funding for the Day Break Services out of the Senior Trust fund with a recommendation being forwarded to the City Council.

Council Member Tate stated that the Council adopted the 40 developmental assets for youth by means of a resolution in June 2001. He was pleased to see that in the non public service requests that the handball court at Galvan Park would be refurbished, providing activities for youth and young adults. He stated that Lori Escobar has been an asset builder at the El Toro Youth Center for a number of years and that they would be kicking off the Friday Night Jams a week from this Friday at the Britton Gym. This is another avenue for the youth in the community to do something constructive, athletic and stay off the streets. The Lighthouse is also an asset builder for youth. He felt that more work needs to be done with the Lighthouse in providing education on the 40 developmental assets. He wanted to point out that the City is focusing on the 40 developmental assets and that he pleased that they were being reflected in the staff's recommended action.

**Action:**        *On a motion by Council Member Sellers and Seconded by Council Member Tate, the City Council unanimously (5-0) **Adopted** Resolution for the Allocation of FY2002-2003 Federal CDBG Fund.*

**Action:**        *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Authorized** the City Manager to Take All Steps Necessary for Implementation of the CDBG Program including Execution of All required Contracts.*

**Action:**        *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Directed** staff to refer the Day Break Program to the Senior Advisory Commission for its recommendation of funding from the Senior Trust Fund for the Day Break Program.*

**10.     GENERAL PLAN AND ZONING AMENDMENT APPLICATIONS, GPA-01-08/ZA-01-25: MAST - ALCINI**

Director of Community Development Bischoff presented the staff report.

Mayor Pro Tempore Carr noted that the General Plan Update Committee spent a lot of time reviewing this area. He inquired if this property was an area that was discussed by the Committee?

Mr. Bischoff responded that the Committee studied the property located between Church and Monterey Road and discussed the potential of re designating some of the older industrial area for other uses north of this site. He did not recall much discussion about this property, noting that this is minor change in land use.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

**Action:**        *On a motion by Council Member Tate and Seconded by Mayor Pro Tempore Carr, the City Council unanimously (5-0) **Approved** Negative Declaration.*

**Action:**        *On a motion by Council Member Tate and Seconded by Mayor Pro Tempore Carr, the City Council unanimously (5-0) **Adopted** Resolution Approving General Plan Amendment.*

**Action:**        *On a motion by Council Member Tate and Seconded by Mayor Pro Tempore Carr, the City Council unanimously (5-0) **Waived** the Reading in Full of the Zoning Amendment Ordinance.*

**Action:**        *On a motion by Council Member Tate and Seconded by Mayor Pro Tempore Carr, City Council **Introduced** the Zoning Amendment Ordinance by Title Only as follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL RE-ZONING 1.95 ACRES, FRONTING ONTO MAST AVENUE FROM SERVICE*

*COMMERCIAL TO GENERAL INDUSTRIAL (APN 817-02-050) by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

**11. GENERAL PLAN AMENDMENT APPLICATION, GPA-01-07: HALE AVENUE - DELCO**

Director of Community Development Bischoff presented the staff report, noting that a letter was included in the Council's agenda packet from a neighbor located across the street opposing the General Plan amendment request.

Council Member Tate inquired if islands were reviewed as part of the General Plan update process as it appears that this site was set aside for a specific reason.

Mr. Bischoff stated that it is hard to look at every parcel of land in the City as part of the General Plan update. He said that this parcel was one that was over looked.

Mayor Pro Tempore Carr stated that the property owners were aware of the General Plan process. He wondered why, after a three-year process of reviewing the General Plan, property owners are coming forward shortly after resolution of the General Plan update process with requests for general plan changes.

Mayor Kennedy opened the public hearing. Phil Rowe, Delco representative, stated that he would answer any questions the Council may have. He stated that the request is one of a clean up item as indicated by staff. No further comments being offered, the public hearing was closed.

Mr. Bischoff stated that the east side of Hale Avenue is general planned for single family and that it was his belief that a concern of the resident in opposition may be that he believes that there should be more single family on the west side of the road as well. He indicated that the resident in opposition references a plan that would involve triplexes with no garages. He stated that this is not an accurate statement. Units being proposed are single family attached and would be required to provide a two car enclosed garage and a driveway apron.

**Action:**        *On a motion by Council Member Tate and Seconded by Mayor Pro Tempore Carr, the City Council unanimously (5-0) **Approved** the Negative Declaration.*

**Action:**        *On a motion by Council Member Tate and Seconded by Mayor Pro Tempore Carr, the City Council unanimously (5-0) **Adopted** Resolution Approving General Plan Amendment.*

Council Member Chang excused herself from the remainder of the meeting.



**12. ZONING AMENDMENT APPLICATION, ZA-01-22: PEAK AVENUE - VILLA HEIGHTS**

Director of Community Development Bischoff presented the staff report.

Mayor Kennedy opened the public hearing.

Jon McClellan, 410 Farallon Drive, indicated that he resides across the street. He expressed concern with the requested zoning amendment, noting that there is also a request to subdivide the property. He stated that he was advised by planning staff that even if the property was to be subdivided, it would not be allowed to develop. He expressed concern that the facility would be doubling the number of residents without changing the facility. He asked if the city has looked at the project's ability to support an expansion and what effect it would have to the area?

James Albertson, operator for the Villa Heights retirement home, clarified that the facility use to have 32 beds and that he has operated the facility for three years, noting that there are 14 bedrooms, some having 800 square feet. He stated that for a private facility, he has to charge \$2,500 to \$3,000 for a private bedroom versus \$1,500 for a semi private room. He said that there are residents who cannot afford the private rate but that the facility does not have the additional semi private beds. The request would require no additional parking but would provide additional beds for the senior citizens.

Mr. Bischoff stated that the 15-32 bed facility has been existing on the property for some time. He said that the ordinance that established the conditional zoning of the property was adopted in 1982. At time of adoption, the ordinance only authorized, on the two parcels combined, the 99-bed facility that was being constructed on the other parcel. It was his belief that the ordinance was in error as it did not recognize the existing facility. The ordinance, as it currently exists today, does not restrict, limit nor recognizes the existing facility. The amendment being proposed by staff does not increase the number of beds but recognizes the existence of the facility and would establish the limit of 28 beds.

Mayor Kennedy stated that it was his recollection that when the new facility was being proposed, it was the assumption that this facility would be closed, noting that it was not closed. He expressed concern in proceeding with the request this evening. He recommended that this item be continued so that additional information can be provided.

Council Member Sellers stated his concurrence with the recommended continuance as he also has questions that he would like to forward on to staff.

No further comments were offered.

**Action:**        *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **continued** the public hearing for this item to April 17, 2002.*

**OTHER BUSINESS:**

**14.     UTILITY BILLING SOFTWARE SELECTION AND CONTRACT NEGOTIATION**

Chu Thai presented the staff report.

Mayor Kennedy opened the floor to public comment. No comments were offered.

**Action:**        *On a motion by Council Member Sellers and Seconded by Council Member Tate, the City Council unanimously (5-0): 1) **Authorized** Staff to Negotiate for a Contract with Incode, Inc., for InVision Software, Hardware, and Annual Support; 2) **Appropriated** \$130,000 from Water Operations and Sewer Operations Fund Balances (Fund 640 & 650) for the Purchase and Installation of the Utility Billing System; If Staff is Unable to Successfully Negotiate a Contract with Incode, Inc., 3) **Authorized** Staff to begin Negotiations with the Other Three Top Candidates; and 4) **Directed** Staff to Return to the City Council for Award of the Contract following Negotiations.*

**15.     VTA PROPOSED TRANSIT FARE STRUCTURE CHANGES AND PROPOSED TRANSIT SERVICE REDUCTION PLAN**

Planning Manager Rowe presented the staff report. He indicated that Bill Capps with VTA was present to answer questions that the Council may have.

Mayor Kennedy opened the floor to public comment regarding service reduction or fare increases.

Bill Capps, Service Planning Manager with VTA, indicated that VTA is facing many of the same financial difficulties that every other public organization is facing, with a \$40 million deficit being projected for next fiscal year. He said that VTA cannot continue to provide services at the current level with the projected budget deficit. He indicated that VTA is proposing a fare increase and reduction in service. He stated that 80% of VTA's operating budget comes from sales tax revenues. With the economy being in a slump, it is what is driving the deficit. He said that internal steps have been taken in order to reduce operating costs. He indicated that every manager has been required to submit a plan to reduce expenditures by 15%, including a hiring freeze. A lot of the capital projects that are locally funded are being deferred or eliminated (\$70 million next fiscal year). He stated that approximately 56 of the 78 routes would be affected by service reductions. VTA tried to be selective and looked at routes that were not being used. He said that the proposed plan for Line

14 is to eliminate the route entirely. Line 14 provides services to seniors and the San Pedro Avenue area and felt that there is a perceived need in this area versus actual usage. He said that the total boarding in the San Pedro area amounts to four individuals per day. He stated that it is hard to make decision as to where to make cuts in order to minimize the number of individuals that would be impacted.

Mayor Kennedy inquired as to alternatives for senior residents who do not have alternate modes of transportation?

Mr. Capps responded that it is unknown if these four individuals are senior citizens. He stated that should seniors qualify for outreach and escort services, para transit services would be a potential option to them. He stated that taxi service is part of the outreach and escort services.

Mayor Pro Tempore Carr stated that he understood the need for cuts. He inquired whether VTA has a plan to reinstate services and reduce fares once the economy picks up again?

Mr. Capps responded that the plan to reduce services was focused on minimizing the impacts. In cases where riderships were extremely low, it would not be effective nor efficient to restore these services. He said that the light rail line schedule is proposed to operate every 12 minutes versus every 10 minutes. He stated that there would be a priority list of services to be reinstated but that he did not believe that poor ridership service areas would be reinstated.

Mayor Pro Tempore Carr expressed concern that the south county area, Morgan Hill in particular, has been supportive of the sales tax measures even though the majority of these revenues do not provide services to south county residents. He expressed concern that as these cuts go into effect, the affect of the minium cuts in the County may be less than what the effect may be to south county as there are other options for those who reside in the county who will have other modes of transportation such as light rail. He stated that Caltrain would also be reducing services to south county. He noted that the sales tax measures supported by Morgan Hill residents promised increased services over the years and yet, we have not seen those increased services. With the reduction of transit options for south county, individuals would be forced to get into their cars and sit in traffic. He noted that the City made assumptions in its general plan that 10% of the residents would be using transit services for the build out of the plan. He requested that VTA take into consideration that south county is disjointed from the rest of the transit services and that when services are put into place, consideration be given to south county as opposed to the rest of the county.

Mayor Kennedy suggested taxi type services be provided for those individuals who would be disbursed in order to fill the gap need of transportation.

Mr. Capps stated that cost was not the issue but that it would be operator union contracts as there are restrictions as to what VTA can do, contract wise. He said that the only contracting allowed is

through the shuttle program to light rail.

Mayor Kennedy noted that south county will be losing while the rest of the county is getting a subsidized transit system. He felt that the community needs to get its fair share of transit services. He requested that VTA consider restructuring its routes to meet the community's needs.

Council Member Tate expressed concern with the fare structure. If there is to be an increase in rates, he felt that the rates should be higher for adults, and less for youths and seniors. He noted that the percentage fare rate increases for youths is higher than the other age groups.

Mayor Kennedy opened the floor to public comment. No comments were offered.

**Action:**        **Report noted and filed.**

**Action:**        *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council, on a 4-0 vote, with Council Member Chang absent, **agreed** to extend meeting beyond 11 p.m.*

#### **16.    APPROVAL OF WATER, SEWER, AND STORM DRAINAGE MASTER PLANS**

City Manager Tewes recommended that this item not be discussed this evening as it would return to the City Council at a future meeting.

Mayor Kennedy stated that he was disappointed with the executive summaries as they do not provide conclusions nor recommendations. He felt that in order for the report to make sense, you would need to read the entire report and be an engineer. He requested that staff go back to the consultant and request an executive summary that is truly an executive summary.

**Action:**        *It was the consensus of the City Council to **Continue** this item. (Council Member Chang not present).*

#### **SECOND READING OF ORDINANCE:**

**Action:**        *On a motion by Mayor Pro Tempore Carr and Seconded by Council Member Tate, the City Council **adopted** the below listed Ordinances as follows:*

#### **17.    ADOPTED ORDINANCE NO. 1550, NEW SERIES**

*AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL PRE-ZONING 19.5 ACRES, LOCATED ON THE WEST SIDE OF HILL ROAD, ON THE NORTH AND SOUTH SIDE OF JEAN COURT FROM COUNTY A-20 TO RESIDENTIAL ESTATE*

*40,000/RESIDENTIAL PLANNED DEVELOPMENT, APPLICATION ZA-97-08: (APN'S 728-08-014 & 015, 728-07-047, 048, 050, & 051) by the following roll call vote: AYES: Carr, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: Chang.*

**18. ADOPT ORDINANCE NO. 1551, NEW**

*AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING ORDINANCE NO. 1472, NEW SERIES TO ALLOW FOR A ONE YEAR EXCEPTION TO LOSS OF BUILDING ALLOTMENT FOR FIVE FY 2001-02 BUILDING ALLOTMENTS FOR MEASURE P PROJECT MP-98-24: EAST DUNNE - O'CONNELL (APN'S 817-74-005 & 006) by the following roll call vote: AYES: Carr, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: Chang.*

**19. ADOPT ORDINANCE NO. 1552, NEW SERIES**

*AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING ORDINANCE NO. 1502, NEW SERIES TO ALLOW FOR AN AMENDMENT TO THE PRECISE DEVELOPMENT PLAN FOR A 58-UNIT SINGLE FAMILY PROJECT ON A 20-ACRE SITE LOCATED ON THE SOUTH SIDE OF EAST DUNNE AVENUE ADJACENT TO THE EAST SIDE OF THE CHURCH LOCATED AT 1790 EAST DUNNE AVENUE (APN'S 817-19-009 & 049) by the following roll call vote: AYES: Carr, Sellers, Tate; NOES: None; ABSTAIN: Kennedy; ABSENT: Chang.*

**20. ADOPT ORDINANCE NO. 1553, NEW SERIES**

*AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL PRE-ZONING 30 ACRES, FROM COUNTY A-20 TO PUBLIC FACILITY, APPLICATION ZA-01-09: HALE AVENUE - CATHOLIC HIGH SCHOOL (APN 764-09-012) by the following roll call vote: AYES: Carr, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: Chang.*

**21. ADOPT ORDINANCE NO. 1554, NEW SERIES**

*AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO TITLE 18, ZONING, OF THE MUNICIPAL CODE TO ADD NEW TEXT REGARDING MAXIMUM FRONT YARD FENCE HEIGHT REQUIREMENTS IN OS, RE-100,000, RE-40,000, AND RE-10 ZONING DISTRICTS by the following roll call vote: AYES: Carr, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: Chang.*

**22. ADOPT ORDINANCE NO. 1555, NEW SERIES**

*An Ordinance of the City Council of the City of Morgan Hill Amending Ordinance No. 1503, New Series, to Allow for a One-year Exception to Loss of Building Allotment for Nineteen FY 2001-2002 Building Allotments for Measure P Project, MP-99-16: East Dunne-O'Connell (Trovare) (APN 817-19-009 & 049) by the following roll call vote: AYES: Carr,*

*Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: Chang.*

**FUTURE COUNCIL-INITIATED AGENDA ITEMS**

No items were noted.

**ADJOURN TO CLOSED SESSION**

Mayor/Chairman Kennedy adjourned the meeting to closed session to conclude discussion of two items continued from the earlier held closed session.

**RECONVENE**

Mayor/Chairman Kennedy reconvened the meeting at 11:45 p.m.

**CLOSED SESSION ANNOUNCEMENT**

Mayor/Chairman Kennedy announced that no reportable action was taken on the two closed session items discussed.

**ADJOURNMENT**

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 11:46 p.m.

**MINUTES RECORDED AND PREPARED BY**

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**MOIRA MALONE, Office Assistant II**

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**IRMA TORREZ, City Clerk**